

RE: Illegal VOID SENTENCE

Dear badjurist.com :

My name is Albert M. Russaw, and im in the process of exposing the Houston County Superior Court (Judge Katherine K. Lumsden).

First, Mr. Russaw were convicted by a Houston County, Grand Jury, June 21, 2018 for Trafficking in Cocaine, Possession of Cocaine with intent to Distribute. (indictment # 2017-C-52221-K)

However, trial judge Katherine K. Lumsden did violate O.C.G.A 16-1-7(c) and a illegal void sentence of 40 yrs recidivist was imposed. trial judge merged a subsequent offense (O.C.G.A 16-13-30(d) / O.C.G.A 17-10-7(c) into O.C.G.A 16-13-31(c) which is illegal / void. The court is in denial by refusing to vacate / correct clear plain error. See Nazario v State, 293 Ga. 480 (2013) plus exhibits

Language of Ga. Code Ann O.C.G.A 16-13-31, "28 grams or more," would not allow the prosecutor to divide the amount discovered during a search for the purpose of creating multiple charges. See Transcript of Motion Proceeding March 05, 2018

In Mr. Russaw effort of litigation by maintaining his <sup>actual</sup> innocence, as pro se Russaw has been deprived by the court's Equitable Powers.

The trial court errors are so plain, yet Mr. Russaw remedy has not been met to undo its consequences, Badjurist.com would be excellent in justice best interest.

April 21, 2017 Russaw failed to stop sign, the stop lead to an illegal search / seizure, contraband was found, Ofc. Houck probable cause was based upon odor of marijuana. In *Wingate v State*, 347 Ga. App. 341 (2018), Officer qualification to detect the odor must be included in his affidavit, which fails to be included. Also see *State v Kazmierczak*, 331 Ga. App. 817 (2015). No crime was witnessed by the prosecuting witness, failure to stop sign is not a criminal offense, but a Fourth Amendment violation is evident.

At trial, and at Russaw closing argument, Russaw sole defense raised a tampering with evidence claim (O.C.G.A 16-10-94) the Warner Robins Police Dept. Ofc. Houck took a picture of the suspected cocaine on a scale with a bag on top which weighed 28.6 grams, Russaw argued that the substance was less than 28 grams because the bag weight increased the grams, and also Ofc. Houck tampered with evidence and destroyed the evidence according to O.C.G.A 16-10-94. See Jury Trial Transcript June 21, 2018 / exhibits

BadJurist.com i need your professional help/ assistance to expose  
"Houston Judicial Circuit", my story is truth, effective, and demands  
relief of an illegal/ void proceeding instituted maliciously.

Thanks in Advance

151 Albert M. Russaw / GDC # 727575  
Wilcox S. P.  
P.O. Box 397  
Abbeville Ga. 31001

01/17/24

IN THE SUPERIOR COURT FOR THE COUNTY OF HOUSTON

STATE OF GEORGIA

STATE OF GEORGIA                    )  
  )  
                          VS.            ) INDICTMENT NO. 2017-C-52221  
  )  
ALBERT RUSSAW                        )  
  )

TRANSCRIPT OF MOTION PROCEEDINGS

BEFORE THE HONORABLE KATHERINE K. LUMSDEN

MARCH 5, 2018

APPEARANCE OF COUNSEL:

ON BEHALF OF THE STATE:  
MR. RODRIGO SILVA  
HOUSTON COUNTY DISTRICT  
ATTORNEY'S OFFICE  
201 N. PERRY PARKWAY  
PERRY, GA 31069

ON BEHALF OF DEFENDANT:  
MR. JEFF GRUBE  
ATTORNEY AT LAW  
115 CARL VINSON PARKWAY  
WARNER ROBINS, GA 31088

CONNIE K. MONTGOMERY  
OFFICIAL COURT REPORTER  
201 NORTH PERRY PARKWAY  
PERRY GA 31069  
478-218-4863



1 MR. SILVA: I believe it's life or 40.  
2 THE COURT: Okay. Without parole?  
3 MR. SILVA: Correct.  
4 THE COURT: The 40 is without parole?  
5 MR. SILVA: Correct.  
6 THE COURT: Okay. And then on top of that,  
7 if there is a conviction for the cocaine --  
8 MR. SILVA: I think after the second  
9 conviction for sale of cocaine, it would be 40 or life  
10 that the Court may sentence him to.  
11 THE COURT: Okay.  
12 MR. GRUBE: Judge, I'll look at that. I'm  
13 just curious of the -- I don't know that he can be  
14 convicted of both, one and two. Counts One and Two. I'll  
15 look at that.  
16 THE COURT: Well, it may merge for purposes  
17 of sentencing if it's the same cocaine. The possession  
18 with intent will merge into the trafficking. Assuming  
19 that -- the problem we have here is there's two piles of  
20 cocaine so if one of them is 28 grams and there's some  
21 left over, there is a fact scenario that I think is  
22 unlikely based on what I've heard thus far where they  
23 wouldn't merge. But they're likely to merge. The other  
24 two are misdemeanors.  
25 So for Mr. Russaw, for your purposes, we are talking

IN THE SUPERIOR COURT OF HOUSTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA )

v. )

ALBERT MARIO RUSSAW, )

Defendant. )

Case Number: 2017-C-52221-K

ORDER ON MOTION TO CORRECT VOID SENTENCE

The Court is in receipt of Defendant's "Motion to Correct Void Sentence" filed on October 20, 2020 wherein Defendant argues ineffective assistance of counsel and that the indictment was not "returned in open court." Defendant also argues various other claims, including that the sentence is void because the law does not allow the instant pleadings.

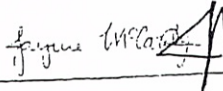
When courts look into motions to correct or vacate a void sentence, they must look at the substance of the motion rather than its nomenclature and determine whether the claims of error present a colorable claim of voidness. *Coleman v. State*, 305 Ga. App. 680 (2010). A sentence is only void when the trial court imposes a sentence that the law does not allow. *Id.* That is not the case here. Defendant has shown no grounds to support the claim that the imposed sentence is one that the law does not allow.

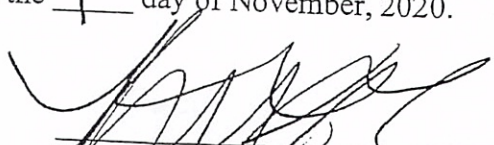
After reviewing the Defendant's motion, case records, and applicable Georgia law, the Court finds no reason to grant Defendant's requested "Motion to Correct Void Sentence", and the motion regarding same is hereby **DENIED**.

SO ORDERED AND DECREED, this the 9 day of November, 2020.

FILED IN OFFICE SUPERIOR COURT OF  
HOUSTON COUNTY

NOV 09 2020

  
Deputy Clerk

  
Honorable Katherine K. Lumsden  
Judge, Superior Court  
Houston Judicial Circuit

The Court also rejected the State's argument that the backpacks would have been inevitably, permissibly searched. The record would not support a finding that the October 26 search took place somewhere other than the DeKalb Police property room ... Given the DeKalb Police policy's requirement that an inventory search be conducted before submission to the property room, no later search would have qualified as an inventory search. The State thus has not met its burden to avoid application of the exclusionary rule under the inevitable discovery exception."

Wingate v. State, Court of Appeals, Case No. A18A1144 (September 19, 2018) The Court of Appeals reverses Wingate's drug convictions, finding that the trial court erred in denying his motion to suppress, agreeing that the search warrants were not supported by probable cause.

The Court rejects the State's argument that Wingate waived the probable cause issue because he did not raise it at the suppression motion hearing.

The Court points out that at the end of the hearing the trial court told the parties that they could file briefs. Wingate subsequently filed a brief with the trial court in which he did raise the search warrant issue, and he cited *State v. Kazmierczak*, 331 Ga. App. 817 (2015) in support of his argument, a case he also cited on appeal.

Wingate's convictions (marijuana possession, manufacture of marijuana, possession of meth., and possession of carisoprodol) were based on evidence found at two locations, but the search warrant for the second location was based on evidence found at the first location. And that search, the Court holds, was improper because it was done pursuant to an invalid warrant.

The Court agrees that the search warrant for the first location, on Long Branch Road, was improperly issued because the affidavit submitted by the police in seeking the warrant did not establish probable cause.

Citing *Coleman*, 337 Ga. App. 304 (2016), the Court says, "We focus on the information set forth within the four corners of the affidavit, because ... the magistrate [was given] no sworn, oral testimony."

The Court sets out the affidavit filed by a Madison County narcotics investigator concerning the Long Branch Road location. In the affidavit, the investigator said he'd verified what FBI agents had told him, particularly that they'd gone to Wingate's residence to talk with him, that as they went to the back door they heard "a radio playing in the out building behind the house [and] as they approached the out building they smelled a strong odor of marijuana coming from the building. The door to the out building was padlocked from the outside and they heard the noise of a fan." They called Wingate, secured the residence, and the investigator prepared his affidavit and a search warrant. [In the out building, they found marijuana growing, along with items used to manufacture marijuana.]

The Court says there was a critical omission from the affidavit. "[T]he affidavit failed to include information about the officers' qualifications to identify the odor." In *State v. Kazmierczak*, 331 Ga. App. 817 (2015), the Courts says "[W]e held that an officer's detection of the odor of marijuana may support the issuance of a search warrant 'if the affidavit for the search warrant contains sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location is qualified to recognize the odor.'"

The Court rejects the State's argument that the magistrate could have "inferred" that the law enforcement officers had the necessary training and experience to identify the odor of marijuana. The Court says, "Such an inference, however, would render the holding in *Kazmierczak* meaningless."

The Court also rejects the State's argument that even absent the detection of the odor of marijuana, there was probable cause to search the out building based on the fact that it was padlocked and a fan could be heard within it. Citing OCGA §17-5-21(a) and *Willoughby*, 315 Ga. App. 401 (2012), the Court says, "[T]he affidavit contains no information that would allow the magistrate to determine that the presence of a padlock and the sound of a fan blowing are indicative of a criminal offense ... A search warrant will only issue upon facts sufficient to show probable cause that a crime is being committed or has been committed."

**2010 Georgia Code**  
**TITLE 16 - CRIMES AND OFFENSES**  
**CHAPTER 10 - OFFENSES AGAINST PUBLIC ADMINISTRATION**  
**ARTICLE 5 - OFFENSES RELATED TO JUDICIAL AND OTHER PROCEEDINGS**  
**§ 16-10-94 - Tampering with evidence**

O.C.G.A. 16-10-94 (2010)  
16-10-94. Tampering with evidence

(a) A person commits the offense of tampering with evidence when, with the intent to prevent the apprehension or cause the wrongful apprehension of any person or to obstruct the prosecution or defense of any person, he knowingly destroys, alters, conceals, or disguises physical evidence or makes, devises, prepares, or plants false evidence.

(b) Nothing in this Code section shall be deemed to abrogate or alter any privilege which any person is entitled to claim under existing laws.

(c) Except as otherwise provided in this subsection, any person who violates subsection (a) of this Code section involving the prosecution or defense of a felony and involving another person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than three years; provided, however, that any person who violates subsection (a) of this Code section involving the prosecution or defense of a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1 and involving another person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than ten years. Except as otherwise provided in this subsection, any person who violates subsection (a) of this Code section involving the prosecution or defense of a misdemeanor shall be guilty of a misdemeanor.

**2010 Georgia Code**  
**TITLE 16 - CRIMES AND OFFENSES**  
**CHAPTER 13 - CONTROLLED SUBSTANCES**  
**ARTICLE 2 - REGULATION OF CONTROLLED SUBSTANCES**  
**§ 16-13-30 - Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties**

O.C.G.A. 16-13-30 (2010)  
16-13-30. Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his control any controlled substance.

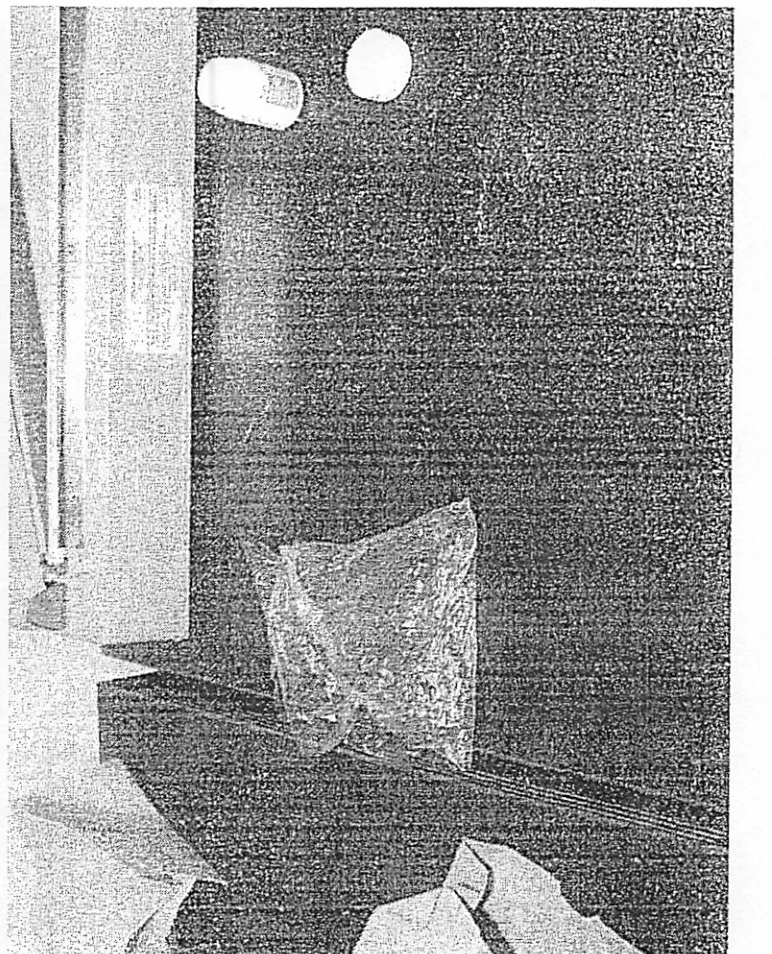
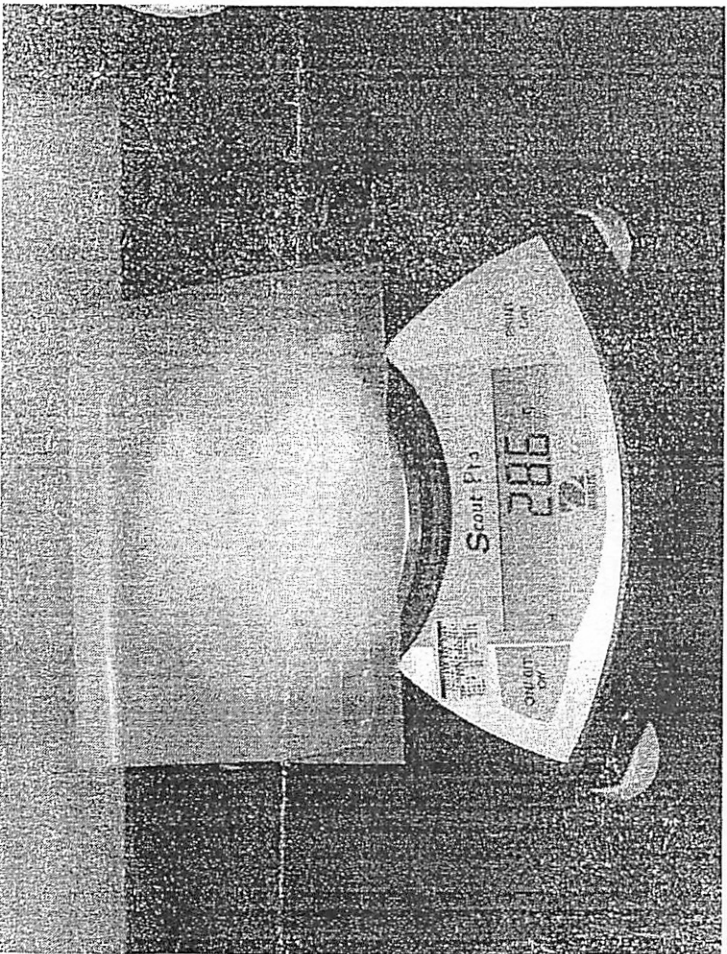
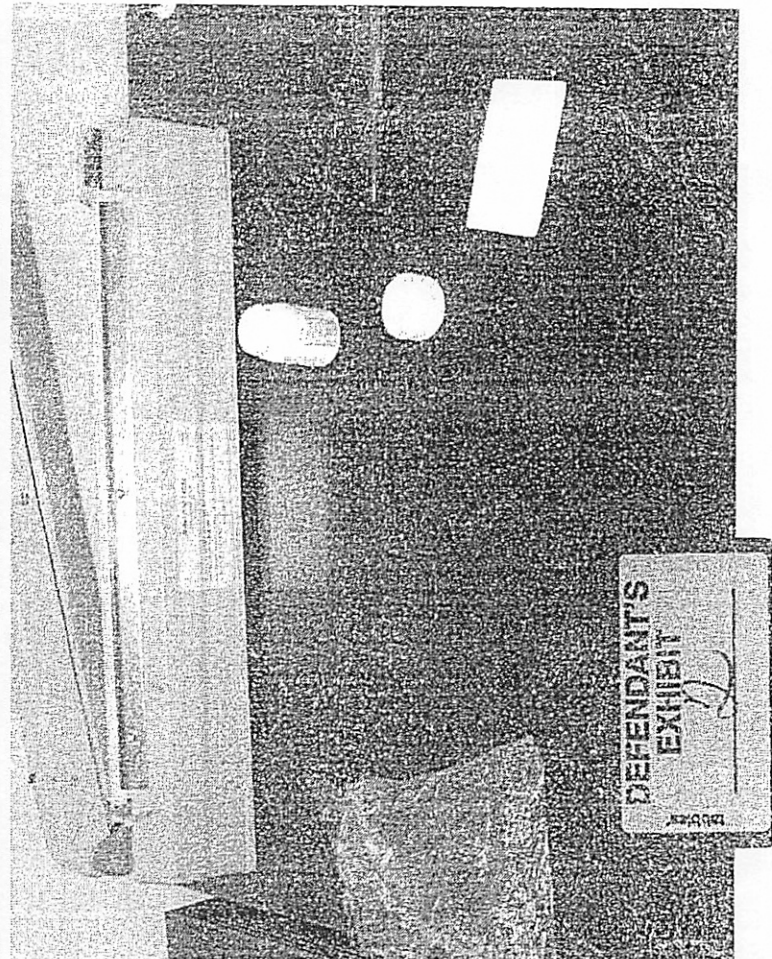
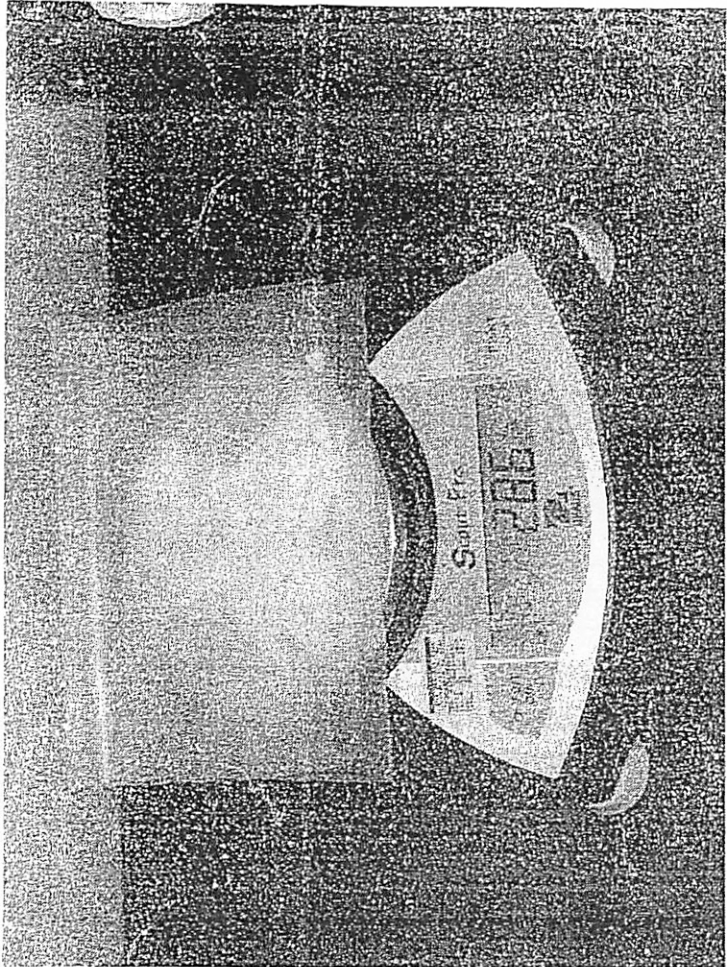
(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two years nor more than 15 years. Upon conviction of a second or subsequent offense, he shall be imprisoned for not less than five years nor more than 30 years.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second

(Exhibit G)

Pictures are worth a thousand words



Scout Plus 985

SC-6.2 Final Disposition Felony Sentence with Probation

Operator TLC  
D.A. Init RLS  
C.R. Init CM

IN THE SUPERIOR COURT OF HOUSTON COUNTY, STATE OF GEORGIA

STATE OF GEORGIA versus

ALBERT MARIO RUSSAW

CRIMINAL ACTION #:

2017 C 52221

MAY Term, 2018

Clerk to complete if incomplete:

OTN(s): 0000000000

DOB: 5/23/1973

Ga. ID#:

FILED IN OFFICE SUPERIOR COURT OF HOUSTON COUNTY

JUN 29 2018

*Jane Wilson* Deputy Clerk  
Final Disposition:  
FELONY with PROBATION

First Offender/Conditional Discharge entered under:

O.C.G.A. 42-8-60  O.C.G.A. 16-13-2

Repeat Offender as imposed below

Repeat Offender waived

PLEA:

VERDICT:

Negotiated  Non-negotiated  Jury  Non-jury

The Court enters the following judgment:

Count	Charge (as indicted or accused)	Disposition (Guilty, Not Guilty, Guilty-Alford, Guilty-Lesser Incl, Nolo, Nol Pros, Dead Docket)	Sentence	Fine	Concurrent/Consecutive/Merged, Suspended
01	VGCSA-TRAFFICKING IN SCHEDULE III	GUILTY,	40 YEARS DOC W/OUT PAROLE	200,000.00	
02	VGCSA-POSSESSION WITH INTENT TO DIST SCHEDULE I-II	GUILTY,			MERGE WITH CT. 1
03	VGCSA-POSSESSION OF MARIJUANA-LESS THAN OUNCE	NOL PROS			MISDEMEANOR
04	FAILURE TO STOP/STOP SIGN	NOL. PROS			MISDEMEANOR

The Defendant is adjudged guilty or sentenced under First Offender/Conditional Discharge for the above-stated offense(s); the Court sentences the Defendant to confinement in such institution as the Commissioner of the State Department of Community Supervision may direct, with the period of confinement to be computed as provided by law.

Sentence Summary: The Defendant is sentenced for a total of 40 YEARS DOC W/OUT PAROLE with the first 40 YEARS DOC W/OUT PAROLE to be served in confinement and the remainder to be served on probation; or  to be served on probation.

The Defendant is to receive credit for time served in custody:  from 4-22-2017; or  as determined by the custodian.

- 1. The above sentence may be served on probation provided the Defendant shall comply with the Conditions of Probation imposed by the Court as part of this sentence.
- 2. Upon service of 40 YEARS DOC W/OUT PAROLE the remainder of the sentence may be served on probation; PROVIDED, that the Defendant shall comply with the Conditions of Probation imposed by the Court as part of this sentence.
- 3. The Court sentences the Defendant as a recidivist under O.C.G.A.:  
 17-10-7(a);  17-10-7(c);  16-7-1(b);  16-8-14(b);  \_\_\_\_\_
- 4. The above sentence includes a behavioral incentive date of 0/00/0000 in accordance with O.C.G.A. 17-10-1.